

# EXHIBIT “N”

EISENBERG & BAUM

520-2617-03625

August 21, 2017

**Via Regular Mail**

EEOC New York District Office  
33 Whitehall Street  
5<sup>th</sup> floor  
New York, NY 10004

**Re: Frilando v. Metropolitan Transportation Authority (New York City)  
EEOC Charge**

To whom it may concern:

This letter is to confirm that this law office has been retained by Kenneth Frilando in regards to discrimination matter against Metropolitan Transportation Authority. Enclosed, please find a copy of the EEOC Intake Questionnaire completed by our client. Please process the form and notify our office once the EEOC charge is initiated. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

EISENBERG & BAUM, LLP

By: 

Andrew Rozynski, Esq.  
24 Union Square East, Fourth Floor  
New York, NY 10003  
(212) 353-8700  
arozynski@eandblaw.com  
*Attorneys for Plaintiff*

AR/dv  
Encs.

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EEOC  
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## U.S. Equal Employment Opportunity Commission

Michael Kalish, Esq.  
Deputy General Counsel  
METROPOLITAN TRANSIT AUTHORITY  
2 Broadway, 4th Floor  
New York, NY 10004

## PERSON FILING CHARGE

Kenneth Frilando

THIS PERSON (check one or both)



Claims To Be Aggrieved



Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

520-2017-03625

## NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:



Title VII of the Civil Rights Act (Title VII)



The Equal Pay Act (EPA)



The Americans with Disabilities Act (ADA)



The Age Discrimination in Employment Act (ADEA)



The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. ☒ No action is required by you at this time.
2. ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.
3. ☐ Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☐ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to

If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Alvin L. Mallette,  
Supervisory Investigator

EEOC Representative

Telephone

(212) 336-3675

New York District Office  
33 Whitehall Street  
5th Floor  
New York, NY 10004  
Fax: (212) 336-3625

Enclosure(s):



Copy of Charge

## CIRCUMSTANCES OF ALLEGED DISCRIMINATION



Race



Color



Sex



Religion



National Origin



Age



Disability



Retaliation



Genetic Information



Other

See enclosed copy of charge of discrimination.

Date

February 14, 2018

Name / Title of Authorized Official

Kevin J. Berry,  
District Director

Signature





## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. **Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known."** If a question is not applicable, write "n/a." Please Print.

### 1. Personal Information

Last Name: Frilando First Name: Kenneth MI: \_\_\_\_\_  
 Street or Mailing Address: [REDACTED] Apt Or Unit #: \_\_\_\_\_  
 City: Rockaway Beach County: \_\_\_\_\_ State: NY ZIP: 11693  
 Phone Numbers: Home: ( [REDACTED] ) (VP) \_\_\_\_\_ Work: ( \_\_\_\_\_ ) \_\_\_\_\_  
 Cell: ( \_\_\_\_\_ ) Email Address: k.frilando@gmail.com  
 Date of Birth: [REDACTED] Sex: Male ☒ Female ☐ Do You Have a Disability? ☒ Yes ☐ No

Please answer each of the next three questions.

- i. Are you Hispanic or Latino? ☒ Yes ☐ No
- ii. What is your Race? Please choose all that apply. ☐ American Indian or Alaska Native ☐ Asian ☐ White  
☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander
- iii. What is your National Origin (country of origin or ancestry)? \_\_\_\_\_

### Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Andrew Rozynski Relationship: Attorney  
 Address: 24 Union Square East, 4th floor City: New York City State: NY Zip Code: 10003  
 Home Phone: ( \_\_\_\_\_ ) \_\_\_\_\_ Other Phone: ( 212 ) 353-8700

### 2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

- ☒ Employer ☐ Union ☐ Employment Agency ☐ Other (Please Specify) \_\_\_\_\_

**Organization Contact Information** (If the organization is an employer, provide the address where you actually worked. If you work from home, check here ☐ and provide the address of the office to which you reported.) **If more than one employer is involved, attach additional sheets.**

Organization Name: Metropolitan Transportation Authority (MTA)  
 Address: 180 Livingston street County: \_\_\_\_\_  
 City: Brooklyn State: NY Zip: 11201 Phone: ( \_\_\_\_\_ ) \_\_\_\_\_  
 Type of Business: Public Benefit Corporation Job Location if different from Org. Address: \_\_\_\_\_  
 Human Resources Director or Owner Name: \_\_\_\_\_ Phone: \_\_\_\_\_

### Number of Employees in the Organization at All Locations: Please Check (✓) One

- ☐ Fewer Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☒ More than 500

### 3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? ☐ Yes ☒ No

Date Hired: \_\_\_\_\_ Job Title At Hire: \_\_\_\_\_  
 Pay Rate When Hired: \_\_\_\_\_ Last or Current Pay Rate: \_\_\_\_\_  
 Job Title at Time of Alleged Discrimination: \_\_\_\_\_ Date Quit/Discharged: \_\_\_\_\_  
 Name and Title of Immediate Supervisor: Jennifer Garcia -Staff Analyst at New York City Transit

If Job Applicant, Date You Applied for Job 04/20/2017Job Title Applied For Train Operator**4. What is the reason (basis) for your claim of employment discrimination?**

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

☐ Race ☐ Sex ☐ Age ☒ Disability ☐ National Origin ☐ Religion ☐ Retaliation ☐ Pregnancy ☐ Color (typically a difference in skin shade within the same race) ☐ Genetic Information; choose which type(s) of genetic information is involved:  
☐ i. genetic testing ☐ ii. family medical history ☐ iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: \_\_\_\_\_

If you checked genetic information, how did the employer obtain the genetic information? \_\_\_\_\_

Other reason (basis) for discrimination (Explain). Failure to accommodate**5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.**

(Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A) Date: 05/23/2017 Action: The request for ASL Interpreter to be present at the time of the exam was deniedName and Title of Person(s) Responsible: Jennifer Garcia

B) Date: \_\_\_\_\_ Action: \_\_\_\_\_

Name and Title of Person(s) Responsible: \_\_\_\_\_

**6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.**

Per Regulation E.10-Special Testing Services for Disabled Applicants: "The Department of Citywide Administrative Services will provide one or more forms of testing accommodations, such as providing an accessible or alternate examination site, additional time to complete the examination, special seating, full written instructions etc..."

**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?**

Jennifer Garcia, Staff Analyst at New York City Transit, stated in her email from 05.23.2017, that the ASL Interpreter could be provided for the Test Instructions, but not for the exam questions, as well as extra time. Per Ms.Garcia, an applicant needs to be able to read in English if he/she wants to take the exam and read the questions.

**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

Of the persons in the same or similar situation as you, who was treated *better* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Of the persons in the same or similar situation as you, who was treated *worse* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

Of the persons in the same or similar situation as you, who was treated the *same* as you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply:

- ☒ Yes, I have a disability  
☐ I do not have a disability now but I did have one  
☐ No disability but the organization treats me as if I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).

Deaf: limited ability to communicate/write/read in English. My first language is American Sign Language

11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?

Yes ☒ No ☐

If "Yes," what medication, medical equipment or other assistance do you use?

Hearing aid

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

Yes ☒ No ☐

If "YES", when did you ask? 04/20/2017 How did you ask (verbally or in writing)? Writing

Who did you ask? (Provide full name and job title of person)

Jennifer Garcia, Staff Analyst at New York City Transit

Describe the changes or assistance that you asked for:

ASL Interpreter for the test's instructions, questions, and answers to be on site for the Train Operator's test

How did your employer respond to your request?

Denied the request

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

A. Full Name	Job Title	Address & Phone Number

What do you believe this person will tell us?

B. Full Name	Job Title	Address & Phone Number

What do you believe this person will tell us?

14. Have you filed a charge previously in this matter with EEOC or another agency? Yes ☐ No ☒

15. If you have filed a complaint with another agency, provide name of agency and date of filing:

16. Have you sought help about this situation from a union, an attorney, or any other source? Yes ☒ No ☐

Provide name of organization, name of person you spoke with and date of contact. Results, if any?

Andrew Rozynski -Eisenberg & Baum, LLP

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

Box 1	<input type="checkbox"/> I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.
Box 2	<input checked="" type="checkbox"/> I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

s/ Kenneth Frilando

August 11, 2017

Signature

Today's Date

**PRIVACY ACT STATEMENT:** This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

- 1. FORM NUMBER/TITLE/DATE.** EEOC Intake Questionnaire (9/20/08).
- 2. AUTHORITY.** 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a), 42 USC §2000ff-6.
- 3. PRINCIPAL PURPOSE.** The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
- 4. ROUTINE USES.** EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters.
- 5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION.** Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

Print Form

DEFENDANTS 000233